

Marta D. Harting

(410) 244-7542

mdharting@venable.com

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VIA ELECTRONIC MAIL

Cassandra B.Y. Tomarchio
Commission/Reviewer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Re: Anne Arundel Medical Center Mental Health Hospital
Application for Certificate of Need
Docket No. 16-02-2375

Dear Commissioner Tomarchio:

This is written to respond to the comments of Baltimore Washington Medical Center ("UM BWMC") on the Applicant's Response to Health Services Cost Review Commission Questions submitted on December 26, 2017.

UM BWMC requests that if the CON is approved, it should be subject to a condition requiring Commission approval before any future increase in the number of beds in the mental health hospital. UM BWMC argues that such a condition is necessary in order to prevent the facility from becoming an IMD in the future and subject to the prohibition on Federal financial participation in Medicaid admissions. The Applicant opposes UM BWMC's request on grounds that it is unnecessary and unsupported by law.

Any expansion in the number of beds in the facility in the future (other than "creep" or waiver beds under COMAR 10.24.01.03E(2)) would require the Applicant to obtain a CON, enabling a complete review by the Commission of the current status and ramifications of the IMD exclusion before expansion could occur. Further, under the waiver bed rule, at 16 beds, the Applicant could only expand by one bed after two years in operation.¹ The Applicant has

¹Waiver beds are authorized by Health-General Article §19-120(h)(2)(i). Under COMAR 10.24.01.03(E), two years after its initial licensure or after its last change in licensed bed capacity, an existing health care facility that is not an acute care general hospital may request that the Commission authorize an increase or decrease in bed capacity as long as it does not exceed ten beds or 10 percent, whichever is less. A CON condition prohibiting waiver beds in accordance with these provisions would be contrary to law.

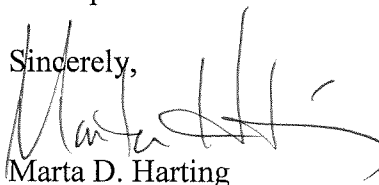
made clear throughout this review that this project is intended to be an additional non-IMD resource for the care of adult Medicaid patients in Maryland who require inpatient psychiatric care, so absent a change in circumstances regarding the IMD exclusion, there is no basis for the suggestion that the Applicant would become an IMD in order to expand by a single bed.² As explained in the Applicant's response to the HSCRC questions, the IMD exclusion does not apply to State expenditures, and the State Medicaid program has continued to authorize adult admissions to the State's IMDs and to reimburse at 94% following the loss of the State's waiver from the IMD exclusion. However, because the proposed mental health hospital will not be an IMD, it will be able to accept adult Medicaid admissions without being subject to the Medicaid program's requirement that hospital emergency departments exhaust available beds in non-IMD settings before an IMD admission will be approved.

In the Matter of Washington Adventist Hospital (Matter No. 13-15-2349), the Commission approved a 40-bed acute care hospital-based psychiatric unit converting to a freestanding mental health hospital – that is, from a non-IMD to an IMD – after the State became subject to the IMD exclusion and began requiring the exhaustion of available non-IMD beds before approving an IMD admission. Accordingly, while the Applicant's mental health hospital is not proposed to be an IMD, the notion that it would be contrary to sound health planning policy if the project was to become an IMD in the future (as suggested by UM BWMC's requested condition) is not supported by Commission precedent.

Finally, UM BWMC's proposed condition requiring Commission approval would apply in perpetuity to any expansion in the number of beds. It would require Commission approval even if the IMD exclusion is eliminated or redefined to increase the number of beds considered to be an IMD in the future, or even if the State is granted another waiver or other relief from the IMD exclusion in the future. Further, UM BWMC proposes an amorphous "approval" requirement without any legal standards to govern approval. There is no basis or precedent for the overbroad and vague approval condition requested by UM BWMC.

Thank you for your consideration of our response.

Sincerely,



Marta D. Harting

²The Commission's standard CON condition for the approval of shell space requires notice to the Commission and obtaining all required Commission approvals before finishing the shell space. If the Applicant decided to use the shell space for waiver beds, it would need to comply with this condition as well as the requirements of COMAR 10.24.01.03(E) governing requests for waiver beds.